COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

{Chapter VIII, Rule 32(2)(b)}

Description of the Case

GOVERNMENT APPEAL No. 1086 of 2001
(Old No. 356 of 1984)

State

.....Appellants

Versus

Hari Ram & others

.....Opp. Parties

Sri Prabhakar Joshi, learned counsel for the appellants
Sri L.K. Tewari, learned counsel for opposite parties

Approved for reporting
~~Not approved for reporting~~

Date:- July 11, 2007

(Dharam Veer, J.)

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL
GOVERNMENT APPEAL No. 1086 of 2001
(Old No. 356/1984)

The State

.....Appellant

Versus

1. Hari Ram
2. Hari Krishna
3. Vikram alias Sardul Vikram
   Police Station Terhi, District Tehri Garhwal.

.....Opposite Party

Dated: July 11, 2007

Sri Prabhakar Joshi, Learned brief holder for the State.
Sri L.K. Tiwari, Learned counsel for the respondents

HON. DHARAM VEER, J.

This appeal, preferred under Section 378(1) of the Code of Criminal Procedure, 1973 (hereinafter to be referred as Cr.P.C.) is directed against the judgment and order dated 13.09.1984 passed by Special Judge (Sessions Judge) Tehri Garhwal in Special Trial No. 2/1984 State Vs. Hari Ram and others whereby, the learned Special Judge (Sessions Judge) has acquitted the respondents under Section 3/7 Essential Commodities Act, 1955 read with Section 34 of Indian Penal Code, 1860 (*hereinafter to be referred as I.P.C.)*

2. On 17.05.2007, notices were issued to respondent nos. 2 and 3. In compliance of that order, Messenger, District Court, New Tehri has informed that respondent no. 2 Hari Krishana has died in the year 1991. C.J.M. Tehri Garhwal, vide his report dated 4.06.2007 has informed that respondent no. 3 Sardul Vikram has died before two to three years. Hence, the appeal against respondent no. 2 Hari Krishna and respondent no.3 Vikram alias Sardul Vikram stand abated.

3. In brief, the prosecution case is hat on 14.10.1983, a truck no. UTX338 loaded with cement was caught hold in the barrier of Bhagirathi Puram by the Head Constables, Govind Ram and Satyapal Singh. Then Satyapal Singh, PW.5 has informed by telephone from the police Chowki Bhaitogi Sera to Police Station Tehri. The entry for the said purpose was made in the G.D. in Police Chowki Bhaitogi Sera, the copy of the G.D. is

Ex.Ka.5. The same information was received in the police Station, Tehri on 14.10.1983 at 12:20 P.M., and the entry was made in the G.D., the copy of the G.D. is Ex.ka.4. Sub Inspector C.S. Yadav was asked to go on the spot and S.I., Lalit Mohan Upreti was asked to go to the Pargana Magistrate, or any competent officer who had got the right to search and seize the cement. S.I., C.S. Yadaw had reached on the place of occurrence. There he has found the truck no UTX338 on the spot along with his driver Hari Ram and conductor Hari Krishna and Head Constable, Govind Ram, Constable Satyapal Singh, Constable Rajbir Singh. Sub Inspector, Lalit Mohan Upreti reached on the place of occurrence i.e. Dam Barriers Department, Bhagirathi Puram, Colony at 6:45 P.M. and told to the S.I., C.S. Yadav that the SDM, M.I., A.R.O., Supply Inspector and B.D.O. were not available, only ASDM Sri V.K. Dubey was available, who told him that police have got the power to seize the cement. After this information Sub Inspector, C.S. Yadav in the presence of Lalit Mohan Upreti and other police Constables Govind Ram, Constable Satyapal Singh and Constable Rajbir Singh had counted the cement bags in truck no UTX338 and they have found 58 bags of cement. The truck driver and conductor had told their names Hari Ram son of Dharam Dutt, Paitwal resident of village Patri, Patti Dharmandal P.S. Tehri, District Tehri Garhwal and Hari Krishna son of Dyanand Mamgai resident of Laini Patti Milang, District Tehri Garhwal. He has asked about the papers for the transportation of the cement but they could not produce the papers and could not give any satisfactory answer. They have told him that the cement was loaded in the truck by the Vikram Contractor (Thekedar) who was the Contractor in Bhaitogi Sera and that was loaded for Tehri. They have also told him that Vikram Contractor (Thekedar) was also in the truck when the truck was stopped, then he had run away form the truck. Vikram Contractor (Thekedar) was seen at the time of running by the Head Constable Govind Ram, Constable Satyapal Singh and Constable Rajbir Singh and Vikram

Contractor (Thekedar) was known to these police constables before this incident. The truck was caught by the Police Officials at 12 o' clock in the noon. The truck along with 58 bags of cement were taken into the possession by police and the respondents driver Hari Ram and Hari Krishna were also taken into the custody and the cement along with truck was taken to the Tehri Police Station. The Fard was prepared on the spot in the electric light and that Fard is Ex.Ka.1. On the basis of this Fard, the F.I.R. was lodged in the police Station, Tehri on 14.10.1983 at 8:15 P.M. the chick F.I.R. was prepared by Head constable, Salig Ram Thapliyal that is Ex.Ka.2. The entry was made in the G.D. the copy of G.D. is Ex.Ka. 3 The investigation of the case was entrusted to Chetan Prakash Sharma, P.W.6 who has recorded the statements of the witnesses and prepared the map of the place of occurrence, that is Ex.Ka. 6. Sanction for the prosecution was granted by the District Magistrate, Tehri Garhwal on 21.03.1984, that is Ex.Ka.7 After completing the investigation, the Investigation Officer has submitted the charge sheet Ex.Ka.8 on 29.02.1984 against respondents. The Special Judge (Sessions Judge) Tehri Garhwal has framed the charge against the respondents under Section 3/7 Essential Commodities Act, 1955 read with Section 34 I.P.C. on 3.07.1984 charge was read over and explained to the respondents who pleaded not guilty and claimed to be tried.

4. To prove its case, prosecution has examined PW.1 Head Constable Govind Ram, PW.2 Sub Inspector, Chaju Singh Yadadv, PW.3 Sub Inspector, Lalit Mohan Upreti, PW.4 Head Constable Shalig Ram Thapliyal, PW.5 Constable Satyapal Singh, P.W.6 Chetan Prakash Sharma, S.S.I. and Investigation Officer. After that the statements of the respondents were recorded under Section 313 Cr.P.C. who have denied the allegations made against them, however they did not produce any documentary or oral evidence in their defence.

5. After appreciating the evidence and perusing the entire records, the learned Special Judge (Sessions Judge) vide his judgment and order dated 13.09.1984 has acquitted the respondents for the charge leveled against them under Section 3/7 Essential Commodities Act, 1955 read with Section 34 I.P.C. Against the said judgment and order dated 13.09.1984, the State has filed the present appeal before this Court.

6. I have heard Sri Prabhakar Joshi, learned brief holder for the State and Sri L.K. Tiwari learned counsel for respondent no.1. Hari Ram, rest of the two accused have died during the pendency of the appeal.

7. To prove its case, the prosecution has examined PW.1 Head Constable, Govind Ram who has stated that on 14.10.1983, he was posted in Police Chowki, Bhaitogi Sera, District Tehri Garhwal as Head Constable. He was on patrolling duty along with Constable Rajbir Singh and Constable Satyapal Singh. When they reached near Bhaitogi Sera rivulet (Nala), they have got the information thought an informer (Mukhbir) that form the side of colony, a Truck no. UTX338 was going to Tehri market loaded with unauthorized cement. On this information, he had come along with his other companions towards the colony, then they reached near barriers of Dam Department. At that time the truck had come towards the colony, then they have given a signal to the truck driver to stop the truck. As the truck was stopped, the contractor (Thekedar) Vikram had run away by taking a jump from the window. He had asked from the driver about the loaded material in the truck, then the driver had told him that the cement was loaded in the truck by contractor (Thekedar) Vikram and the truck was going to Tehri. Then he asked about the receipt and the transport papers from the driver but he could not show any paper of cement and transport. After that he asked the Constable Satyapal to send a message by telephone to the Police Station from the police Chowki that a truck was caught by them at 12:00 noon in the day. The name of the truck driver was

Hari Ram and name of the conductor was Hari Krishana. Satyapal Singh has informed him that, by telephone he had informed to Head Constable, Shalig Ram Thapliyal in the Police Station S.I., Chaju Singh Yadav had started from the Police Station towards the place of occurrence. At about 1:30 P.M. in day the Sub Inspector C.S. Yadav had arrived on the spot, then he has also talked with the driver and conductor. After that the Sub Inspector Lalit Mohan Upreti had reached on the spot at 6:45 P.M. He had talked to the S.I., C.S. Yadav that in Tehri S.D.M., B.D.O., A.R.O., M.I., Supply Inspector were not present and the A.S.D.M., V.K. Dubey had told him that the police was competent to take actions against the respondents. On this Chaju Singh Yadav has prepared the Fard in the Tube light, they have also signed on this Fard. After that the truck along with cement and accused persons were taken into the custody of Police Station Tehri. He has identified his signature on the Fard that is Ex.Ka.1.

8. PW.2 is Sub Inspector Chaju Singh Yadav who has stated that on 14.10.1983, he was the Sub Inspector, In-charge of Police Chowki, Bhaitogi Sera, Police Station Tehri, District Tehri Garhwal. In the police station at 12:20 P.M. on the same day from the telephone Constable Satyapal Singh has informed to the Police Station Tehri, that information was received by the Head Moharrior Shalig Ram Thapliyal that the truck no. UTX338 was caught with the loaded cement and the driver had got no papers about the purchase and for the transportation of cement. On this information, he has move towards the place of occurrence and the Sub Inspector, Lalit Mohan Upreti was sent to call an Enforcement Officer. He had reached on the spot at about 1:30 P.M. Then, he saw that a truck was there on the barrier and his driver and conductor and Head Constable Govind Ram, Constable Satpal Singh, Constable Rajbir Singh were also there. He asked from the driver and the conductor about the papers of cement for transportation but they were

failed to produce the same. They have only said that cement was loaded in the truck by the contractor (Thekedar) Vikram for Tehri. After that at about 6:45 P.M. Sub Inspector, Lalit Mohan had reached on the spot and he had told him that S.D.M., M.I., A.R.O., B.D.O. and Supply Inspectors were not available in Tehri, only A.S.D.M. was available, who told him that police was competent to seize the cement. He had counted the cement bags loaded in the truck, which were 58 in numbers. Then he prepared the Fard in the electric light and all the employees were present. They have signed on the Fard, that Fard is Ex.ka.1 After that he had come to the Police Station, Tehri along with driver Hari Ram, conductor Hari Krishna and with the cement loaded truck. He had taken the truck and cement in his possession. There he had handed over the cement loaded truck and the accused persons to the Police Station and registered the F.I.R. on the basis of recovery Fard.

9. PW.3 is Sub Inspector, Lalit Mohan Upreti who has stated that on 14.10.1983 he was posted as Sub Inspector in the Police Station Tehri, District Tehri Garhwal. On the same day at 12:20 P.M. from Police Chowki Bhaitogi Sera, Constable Satyapal Singh had given an information on telephone to the Police Station, Tehri which was heard by the Head Constable, Shalig Ram Thapliyal. The information was that a Truck was caught by them loaded with unauthorized cement. On this information, Chaju Singh Yadav, Sub Inspector has moved towards the place of occurrence and he was directed to come on the spot along with a competent officer. He had tired to meet with S.D.M., S.M.I, M.I. B.D.O., Supply Inspector, and A.R.O. but he could not get anybody. Only the A.S.D.M., V.K. Dubey met him who told him that the Police was competent for search and seizure. He had reached on the place of occurrence at 6:45 P.M. On the place of occurrence along with Chaju Singh Yadav, Head Constable Govind Ram, Constable Statyapal Singh, Constable Rajbir Singh, truck driver Hari Ram and Conductor Hari Krishna were

Present. Then Sub Inspector, Chaju Singh Yadav has prepared the Fard of recovery on the spot in electric light. He has also signed on the same, that Fard is Ex.K.a1. Then along with driver Hari Ram, conductor Hari Krishna and truck loaded with cement was taken to Police Station Tehri. On the basis of this Fard, the case was registered. He has also stated that 58 bags of cement were loaded in the truck. The accused persons were taken into custody on the spot and they were admitted to the Police Station along with the truck and cement.

10. PW.4 is Head Constable, Shailg Ram Thapliyal who has stated that on 14.10.1983 he was posted as Head Moharrior in Police Station, Tehri. On that day, from the Police Chowki, Bhaitogi Sera, Constable Satyapal Singh has given information on telephone that was received by him. Then he had informed that they have caught a truck loaded with cement and asked to send Sub Inspector immediately. Then he had informed to S.I., Chaju Singh Yadav who had moved towards the place of occurrence and S.I., Lalit Mohan Upreti was asked to go to S.D.M., Tehri for necessary action. On the same day at 8:15 P.M., Chaju Singh Yadav along with S.I., Lalit Mohan Upreti and employees of the Chowki Bhaitogi Sera, had come to Police Station along with two accused persons Hari Ram and Hari Krishana and truck no. UTX338 along with 58 bags of cement loaded in the truck. The two accused Hari Ram and Hari Krishna along with loaded cement were admitted in the Police Station and on the basis of the recovery memo, he has prepared a chick F.I.R. and registered the case. He has stated that on the basis of Ex.Ka.1 he has prepared the chick F.I.R. and registered the case, that chick F.I.R. is Ex.Ka.2 and accordingly the entry was made in the G.D., the copy of G.D. is Ex.Ka.3. He had further stated that when the received telephone from the Bhaitogi Sera, Police Chowki, then the entry was made in the G.D., the copy of G.D. is Ex.Ka.4.

11. P.W.5 is the Satya Pal Singh. He has stated that on the dated of incident, he was posted in Bhaitogi Sera, Police Station as a constable. The incident is of 14.10.1983. At 9:30 A.M., he was going for patrolling duty to Zero Point. Head Constable Govind Ram, Constable 112 Rajveer Singh were also with him. When they reached Bhaitogi rivulet Tiraha, then they were informed that a Truck No. UTX338 in which cement was loaded illegally, was coming for selling. Then they reached Bhagirathipuram Colony Carrier by foot from where the said truck was coming. Then they got the truck stopped and then the accused Vikram ran away from the Truck. Then they got the truck checked in which cement bags were loaded. They also asked from the driver about the papers of transportation of cement and also Truck but the Driver refused to give the same and informed them that he did not have those papers. The driver also informed them that the cement belongs to Contractor Vikram. Then he has telephonically informed the Police Station, Tehri about the incident and Head Constable Shalig Ram received the information. He informed Shalig Ram that they have detained a Truck in which illegal cement was loaded. Then he was informed that S.I., Chhajju Singh Yadav was coming to the place occurrence. Then he went to the place of occurrence and accordingly informed them. S.I. Chhaju Singh Yadav reached at about 12:30 p.m. and he has informed that Sri Upreti, S.I. has sent him to cal the higher officials. Then Sri Upreti, S.I. reached at the place of occurrence at 6:45 p.m. and he informed that S.D.M. B.D.O., A.R.O. were not available and he could meet only to A.S.D.M., who has informed him that police have the power to seize and search the cement. Then the Chhaju Singh Yadav counted the cement bags and prepared a Fard i.e. Ex.Ka-1. He has also signed on that Fard. Then the driver, conductor and the Truck along with 58 Bags of cement were admitted to the police station and the Fard was given in the police station. When the Fard was prepared, the S.I. had asked the names of driver and conductor, then the driver told his name Hari Ram

and conductor told his name Hari Krishan. From the said Chowki Bhaitogi Sera, when he informed in the Police Station Tehri then entry was made in the G.D., copy of the G.D. is Ex.Ka-5.

12. P.W.6 is the Chetan Prakash Sharma, I.O. who has stated that on 14.10.1983, he was posted as S.S.I. in Police Station, Tehri. On that day, he has started the investigation of the case. He has recorded the statements of the witnesses. He has visited the place of occurrence and has prepared the site plan i.e. Ex.Ka.-6. On 25.2.1984, a request was made to the District Magistrate along with the papers for grant of sanction. The sanction was typed on the same day but the District Magistrate did not sign on the sanction on the same day and he had stated that he will discuss the matter with the officers of the Supply Department. After that he has received the sanction on 21.3.1984, that sanction is Ex.Ka.-7 On 29.2.1984 after completing the investigation, he has submitted the charge sheet Ex.K.a 8 against the respondents.

13. After that the statements of the respondents were recorded u/s 313 Cr.P.C. who have denied the allegations made against them. Respondent No. 1 Hari Ram has stated that the Truck was coming to the Tehri from the Zero Point and he was doing the work for Thapar Company by that Truck. Vikram Singh asked him for the transportation of cement and he has loaded the cement on hire.

14. After appreciating the evidence on record, the learned Special Judge (Sessions Judge) has acquitted the respondents on following four grounds:-

A. S.I. Chajju Singh Yadav was not the Enforcement Officer and he was competent to arrest the respondents and for the search and seizure of the cement.

B. He has acquitted the respondents on the ground that the sanction of District Magistrate was not as per the law.

C. He has given a categorical finding that as per the U.P. Cement Control order, 1973, the cement can be

transported from one place to another place within the District but not outside the district.

D. The evidence was unreliable and the prosecution could not prove its case.

15. Sri Prabhakar Joshi, learned brief holder for the state could not point out any defect in the judgment and order passed by Special Judge (Sessions Judge) Tehri Garhwal. He has only argued that the prosecution has proved its case against the respondents as per the law and rules.

16. From the evidence discussed and after perusal of the entire record, it reveals that the Sub-Inspector of police does not fall within the definition of the Enforcement Officer as provided in the U.P. Cement Control Order, 1973. Order 2(c) of the said order defines the Enforcement Officer, which reads as under:-

> (c) *'Enforcement Officer' means the Food Commissioner, Additional Food Commissioner, Deputy Food Commissioner, Assistant Food Commissioner, the District Magistrate, the Additional District Magistrate, the Sub- Divisional Magistrate, the District Supply Officer and includes any other officer authorized by the State Government to exercise the powers and perform the functions of Enforcement Officer under this Order.*

17. In this way, the Sub-Inspectors of the Police do not come within the definition of the Enforcement Officer and even the prosecution has not filed any notification or order passed by the State Government authorizing the Sub-Inspector of the Police for the search and seizure of the cement under the U.P. Cement Control Order, 1973, Thus, the search and seizure made by the Sub-Inspectors on 14.10.1983 at 6:45 P.M. at barrier of Dam Project, Bhagirathi Puram Colony is not as per the law and the total proceedings and search and seizure done by the Sub-Inspectors was illegal and against the provisions of the U.P. Cement Control Order, 1973.

18. From a perusal of the above said evidence, it is also clear that the truck was going with loaded cement from the Bhagirathi Puram to Tehri and both the stations are in the District Tehri Garhwal. Order 5 of the U.P. Cement Control Order, 1973 is relevant to mention here which reads as under:-

"Restriction on movement of cement- No person shall carry or attempt to carry or abet the carrying by rail or by motor vehicle or any other mechanized vehicle or vessel or any other mode of transport cement from any place in one district to any place outside the district, except under and accordance with a permit issued by the Licensing Authority of the district form which cement is to be dispatched:"

Provided that nothing in this sub-clause shall apply to-

(i) the movement of cement on Government account or under and in accordance with the military credit note; or

(ii) the movement of cement from the place of manufacture or regular dump to any place outside the district; or

(iii) the movement of cement by any cement company or its representative or distributor.

9. Thus, from a perusal of Order 5 of U.P. Cement Control Order, 1973, it reveals that the transportation of the cement inside the District is not in violation of U.P. Cement Control Order, 1973. In this way, the respondents have not infringed the U.P. Cement Control Order, 1973 and for the transportation of cement, they have not committed any offence punishable u/s 3/7 of E.C. Act. In the tatement recorded u/s 313 Cr.P.C., respondent No. 1 Hari Ram has also admitted that he was a driver and he had simply transported the cement from Bhagirathi Puram to Tehri and the cement was loaded in the Truck by the Contractor Vikram who is the owner of the Truck. In this way, it is clear that the cement does not belong to him and he was not the owner of the cement. He was simply a carrier of cement on hire basis.

20. From the above said evidence, it is also proved that the sanction was not proved as per the law. P.W.6 Chetan Prakash Sharma, I.O. tried to prove this sanction order, does not know even the name of the steno nor any attempt has been made by and on behalf of the prosecution to summon the Steno of the then District Magistrate to prove the signature of the District Magistrate on this Ext.Ka.7 and even this fact that this sanction order was dictated in the presence of this PW.6, Sri Chetan Prakah Sharma, S.I., is not mentioned in the case diary as is admitted to this PW.6 , Chetan Prakash Shrma, himself for which also he is not able to give any explanation whatsoever. He

also does not remember as to besides the case diary, what other papers he had taken along with him when he had met the then District Magistrate in this connection on 25.02.1984. It also appears that even after dictating this sanction order and going through the case diary and other papers of this case, suddenly the District Magistrate would like to consult the Supply Officials as is claimed by this PW.6, Chetan Prakash Sharma. It was true that he wanted to consult the DSO officials before putting his signature on this sanction order already dictated by him, it would mean that he had dictated the sanction order even without applying his mind which would also mean that this sanction was not a valid sanction, on the basis of which the prosecution of the respondents could be launched. Even the sanction order was not signed in the presence of the Investigation Officer, Chetan Prakash Sharma. He has received the letter later on after submitting the charge sheet in the court and nobody was produced in the court before him, that sanction was signed by the District Magistrate V.K. Sinha Ex.Ka.7. In this way, the sanction was not proved as per law. The prosecution has failed to prove the offence under Section 3/7 of the Essential Commodities Act, 1955 and also failed to prove any infringement of the U.P. Cement Control Order, 1973 against the respondents.

21. In view of the above, I do not find any illegality or irregularity in the judgment and order dated 13.09.1984 passed by Special Judge (Sessions Judge), Tehri Garhwal. The appeal is devoid of any merit and is hereby dismissed.

22. The judgment and order dated 13.09.1984 passed by Special Judge (Sessions Judge) Tehri Garhwal is hereby confirmed.

(Dharam veer, J.)

Dated: 11.07.2007
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